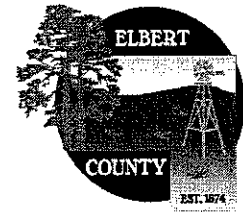




COUNTY OF ELBERT

COMMUNITY & DEVELOPMENT SERVICES OFFICE

P.O. BOX 7
215 COMANCHE STREET
KIOWA, COLORADO 80117
303-621-3136 FAX: 303-621-3165



September 16, 2010

Dear Commissioners:

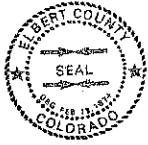
The attached staff report for the Elizabeth 86 Commercial Metropolitan District Service Plan is in a slightly different format than the typical staff report. When the staff report was prepared for the first Planning Commission public hearing, held on August 26th, 2010, there were many outstanding questions from staff regarding the proposed service plan. The applicant responded to those questions prior to the second Planning Commission hearing which was held on September 9th, 2010. The attached BOCC staff report for the service plan includes the staff questions and the applicant's response to the staff questions. The Community & Development Services Office believes that the applicant has satisfactorily addressed the questions that were raised by staff.

The Planning Commission added a condition of approval that the service plan should be reviewed by a qualified third party and that the financial consultant makes a determination that the financial aspects of the services plan were sound. Clifton Gunderson has reviewed the service plan for Elbert County and on page two of their report indicate that: "Overall, we do not find the assumptions in this Financial Plan to be unreasonable given our knowledge of Special Districts in general and current market conditions, especially considering that complete development in the Commercial District does not start until 2015, and for the Residential District it does not start until 2016." Clifton Gunderson also recommended several revisions to the Service Plan in their "Independent Accountant's Report on Consulting Procedures", which the applicant has addressed in the enclosed revised Service Plan.

We look forward to presenting this service plan to you at your September 22nd public hearing.

Respectfully submitted,

Curtis Carlson, Senior Planner



COUNTY OF ELBERT

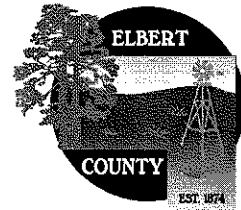
PLANNING DEPARTMENT

P.O. BOX 7

215 COMANCHE STREET

KIOWA, COLORADO 80117

303-621-3136 FAX: 303-621-3165



September 16, 2010

For the Elbert County Board of County Commissioners

September 22, 2010

TO: ELBERT COUNTY BOARD OF COUNTY COMMISSIONERS
FROM: CURTIS S. CARLSON, SENIOR PLANNER
RE: SP 10-0024 ELIZABETH 86 COMMERCIAL METROPOLITAN DISTRICT

Petitioner's responses to each of the questions below are provided in text boxes after the question or comment

APPLICANT / OWNER: ELIZABETH 86 INVESTMENTS, L.L.C.
TERY R. LARREW
1404 LARIMER STREET, SUITE 300
DENVER, CO 80202

REPRESENTATIVE / COUNSEL: MILLER ROSENBLUTH, LLC
DIANNE D. MILLER, ESQ.
700 17TH STREET, SUITE 2200
DENVER, COLORADO 80202

SUMMARY OF REQUEST AND RECOMMENDATION:

Request: The Applicant is requesting approval by the Board of County Commissioners for the submitted Service Plan for the creation of the Elizabeth 86 Commercial Metropolitan District.

This document was first submitted to the Town of Elizabeth and still contains many references to the Town of Elizabeth that need to be changed to Elbert County.

The Petitioner submitted its Service Plan on August 16 to the County Planning Department. There were no references to the Town of Elizabeth in the submitted Service Plan text. It is possible that the Service Plan that was reviewed, inadvertently, was the copy sent to the County as a referral agency when the Service Plan was before the Town of Elizabeth. That copy was sent to the County several weeks ago.

The proposed Elizabeth 86 Residential Metropolitan District includes property generally situated south of Highway 86, east of Wild Pointe, west of the existing Safeway and Big R retail area, and north of Ritoro – See Exhibit A. The District will consist of commercial development and is being created to finance the construction and the perpetual maintenance of certain public improvements for the use and benefit of all of the taxpayers and owners of real property within the District.

The district shall have all of the powers of a metropolitan district as such powers are described in 32-1-1001 and 1004, C.R.S. except that the District shall not provide emergency medical or fire protection services or facilities.

For detailed information regarding items referenced in this Staff Report, please refer to the Elizabeth 86 Commercial Metropolitan District Service Plan.

Recommendation: Community & Development Services has recommends approval of the Service Plan to the Board of County Commissioners subject to included conditions and any additional information or clarification that the Board of County Commissioners needs or requests, plus any additional conditions which may be required. CDS comments are numbered and in blue color throughout the Staff report. Orange color was used to bring special attention to concerns. The Applicant's responses to CDS questions are shown in boxes. All "Exhibits" referenced in this Staff Report refer to Exhibits in the Service Plan

This Service Plan has been prepared by Elizabeth 86 Investments, LLC and the following participating consultants listed on pages 2 and 3 of the Service Plan.

PURPOSE OF THE PROPOSED DISTRICT

The Improvements are intended to be for the use and benefit of all of the taxpayers and owners of real property within the District boundaries.

EXISTING CONDITIONS

The area within the boundaries of the District is undeveloped at this time. Note the map in Exhibit B.

ANTICIPATED DEVELOPMENT

The Developer anticipates total build-out to occur by 2017, subject to final design and development approval by the County. It is acknowledged that County development standards and requirements, (as well as other factors), may affect the anticipated build-out schedule. 2) What are the back-up plans for funding development and bond payments if development occurs slower than 2017??

2. There are several responses to this question:

A. Although districts are a necessary and important component of the financial development plan, the districts are not the entities primarily responsible for funding the development. The developer of the project remains primarily responsible and this obligation is stated in Section VI of the Service Plan. Districts are a financing mechanism but they only provide public improvements when development occurs;

(Continued on next page)

they attempt to coordinate with development and provide improvements only when development is imminent to reduce the waste of unused improvements.

B. The developer provides advances to the district to support maintenance, operations and, in some circumstances, debt obligations of the district. Slower development may require the developer to provide advances longer than anticipated by the financial plan, which can only estimate the future of the project. However, until development is actually underway, the expenses of the district are quite small.

C. If the question refers to a slowdown after development is underway and bonds have issued, then homeowners and property owners are protected by mill levy caps, developer advances and the budget process.

Mill levy caps have been used in Colorado special districts since the early 1990s. The cap prevents a bondholder from forcing the revenues received from the District's mill levy in a special district beyond a certain level. If the amount of tax revenues raised from the mill levy cap is insufficient to pay the bonds, the bondholders must be satisfied with extending the payment term; the bondholder CANNOT force the district to raise the revenues beyond the mill levy cap. The mill levy caps can be changed only in the event the State legislature changes the law regarding how taxes are calculated. If the legislature changes the law, the district can reset the cap so that it is neither benefitted nor harmed by the change of law.

For example, assume a District's mill levy (imposed at its cap, 50 mills in this instance) raised \$1,000,000 in 2010 from all the taxable property in the District. In 2011 the state legislature changes the method of calculation by lowering the assessed valuation ratio for residential property from 7.96% to 7%. At the new rate, the District's mill levy cap at 50 mills will only generate \$879,397; a loss of \$120,603 as compared to 2010. Therefore, the District is permitted to raise its mill levy cap to 50.686 mills. The new mill levy cap will result in \$1,000,000 in revenues, just as in 2010. Although property owners in the district see the mill levy increase, they are not paying any additional taxes in actual dollars.

(Continued on next page)

Their tax bill from the District is exactly the same in 2010 and in 2011. Districts also set their budgets each year, just like cities and counties. A district receives its preliminary assessed valuation in August of each year and must adopt a budget by December 10. District's are permitted (within the confines of their mill levy caps) to set the mill levy each year to cover operations and debt service. So a district has the opportunity to modify its budget each year in anticipation of expected tax revenue.

(End of response)

3) At what level of development will the District be capable of financing itself at at-least a breakeven point??

3. The financial plan currently anticipates developer advances through 2019. That date assumes an assessed valuation for the District of \$3,767,457 and issuance of bonds at \$2,560,000 in 2017. A change in any of those assumptions will change the date the District is "self-sufficient."

For example, if the District doesn't issue bonds until four years after the financial plan anticipates, the District will be self-sufficient approximately two years sooner. If assessed valuation doesn't reach the anticipated level until two years after the financial plan anticipates, then the District will be self-sufficient two years later.

IMPROVEMENT SCHEDULE

Construction of the Improvements will commence as soon as possible following approval of a Planned Development Plan by the County and subject to market demand. 4) The time frame to process a typical PUD, Preliminary plat, & 1041 is currently estimated at 7 to 8 months. Depending on the submission date, that puts us Spring to Summer of 2011. Exhibit G. Page 1 of the Commercial Development projection, shows completion of development on lots 1-5, Lots 7-9, and PA-6, lot 1&2 in 2009 with first appraisal in 2010 and assessed valuation appearing in 2012. As such, the Document is already two years

4. The financial plan has been updated to move out projections four years.

behind projections.

The Developer anticipates that construction of the Improvements will be completed by 2017. Construction of the Improvements will be phased to match the development schedule to ensure that the Improvements are built as needed within the District. 5) Should the

5. The financial plan has been updated to move out projections four years.

5a) Projection charts should be current and

5a. The financial plan has been updated to move out projections four years.

5b) evidence provided of a firm back-up plan to cover development expenses not realized from underdeveloped revenues.

5b. See the response to Question #2 above.

COUNTY OF ELBERT CONSTRUCTION STANDARDS

The District will ensure that the proposed Improvements are designed and constructed in accordance with the standards and specifications of the County and other governmental entities having jurisdiction over the District. The District will obtain approval of civil engineering plans and permits for construction and installation of public improvements from the County.

DEDICATION OF IMPROVEMENTS TO ELBERT COUNTY

Upon completion of the construction of the Improvements, the District will dedicate all Improvements to the County or other appropriate governmental entity. The County or such other governmental entity shall be responsible for the perpetual operation and maintenance of such dedicated Improvements.

6) The County currently doesn't have departmental resources to maintain water, sanitary sewer and park and recreation services. It seems that more of the details for handing over District Services and Responsibilities, should be addressed now.

6. The District is capable of operating and maintaining any or ALL public improvements serving the development. The Planning Department has stated that the County will accept for maintenance the streets improvements in the District. Elizabeth Park and Recreation District maintains park and recreation improvements within their boundaries. The operation and maintenance of water and sewer Improvements cannot be determined until development approvals have been completed. Therefore, Section IV.f the Service Plan will be revised to state:

f. Dedication of Improvements. Upon completion of the construction of the Improvements, the District anticipates that the County will accept the street improvements for operation and maintenance and that Elizabeth Park and Recreation District will accept park and recreation improvements. Water and sewer improvements may be operated and maintained by Elbert & Highway 86 Commercial Metropolitan District, by the Town of Elizabeth or by the District. Street landscaping may be maintained by a homeowner's association or property owners adjacent to the street landscaping, including street trees. The determination of operation and maintenance of water and sewer improvements cannot be determined with certainty until all development approvals have occurred. The District, however, is capable of operating and maintaining all Improvements for the District if the County or any other entity is unwilling or unable to operate and maintain the improvements as described above. The District shall retain the obligation for maintenance of any Improvements that are not accepted for maintenance by the County or by another governmental entity or non-profit ownership association.

6a) This could be accomplished through the PUD development and Subdivision Improvement Agreement. A Service Plan prepared following approval of a PUD could more appropriately address many of the development issues.

6a. The Developer has discussed with the Planning Department the need for the approval of districts at this time. Although some information in the Service Plan might be more certain if development approvals were in place, Service Plans are designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. While the assumptions upon which this Service Plan are generally based and are reflective of anticipated development for the property within the District, the cost estimates and Financing Plan are expected to perform within a range of parameters to provide necessary services and facilities without the need to amend this Service Plan as development plans change. Modification of the general types of services and facilities, and changes in proposed configurations, locations, or dimensions of various facilities and improvements can be accommodated to the development's needs by the District.

The District shall dedicate all right-of-way and easements necessary for the operation and maintenance of the dedicated Improvements to the County or such other governmental entity, to the extent the District has the necessary property interest to provide such dedication.

SERVICES TO BE PROVIDED BY OTHER GOVERNMENTAL ENTITIES

The District shall receive 7) provide water, street, sanitary sewer and park and recreation

7. Section IV.g of the Service Plan will be revised as follows:

g. Services to be provided by other governmental entities. The District may provide water, street, sanitary sewer and park and recreation services either directly or through intergovernmental agreements with other appropriate special districts. The District shall receive fire protection services from the Elizabeth Fire Protection District and police services from the County.

services. ~~from the County~~. The District shall receive fire protection services from the Elizabeth Fire Protection District and police services from the County.

SERVICE PLAN:

Service Plan Requirements: The Colorado revised Statutes (CRS) 32-1-102 specify the contents of a service plan. The following is a response to the statutory requirements of a service plan.

(2) The service plan shall contain the following:

a. A description of proposed services.

The District shall be authorized to provide for the financing, construction, acquisition, installation and perpetual maintenance of streets, water sanitary sewer, traffic and safety controls, street lighting, park and recreation, landscaping, and storm drainage facilities, subject to mutual agreement between the District and the County. Upon completion of the construction of the Improvements, the District shall dedicate 8) all or some of the improvements to the County or other appropriate non-profit or governmental entity. The County or such other governmental or non-profit entity shall be responsible for the perpetual operation and maintenance of agreed upon Improvements, within and without,

8. The Service Plan will be revised as suggested.

[9) What about the "without??" the boundaries of the District, which are not retained by the District,

9. The petitioner is not clear what question is being asked here. Districts are empowered by their service plans to construct and finance improvements both within and outside their boundaries. For example, a District might construct road improvements such as accel and decel lanes on a road adjacent to their boundaries but not within their boundaries. The accel/decel lanes are a benefit to the District's taxpayers but are not within the boundary of the District.

[10) What does the District currently anticipate retaining??], or other appropriate governmental or non-profit entity.

10. The District anticipates retaining any improvements that neither the County nor any other special district can or will maintain. See #6 above.

The total estimated cost of construction of all the Improvements is Three Million, Three Hundred Thirty Thousand, Two Hundred Twenty Five Dollars [\$3,330,225.00]. The difference between the cost of Improvements [and other infrastructure and development costs not described herein], [11) What are the other infrastructure and development cost not described herein??]

11. Districts are permitted to construct and finance only certain specified public improvements. Districts cannot construct or finance private improvements nor can they construct or finance “dry utilities,” meaning electric lines and gas lines. The “other infrastructure and development costs” refer to those items: private improvements including overlot grading, parking improvements, private signage, as well as public improvements such as dry utilities.

and amounts available from bond proceeds remain the obligation of the Developer. Subject to the Voted Debt Authorization Limit and Service Plan Debt Limit [~~defined herein~~ as defined in the Service Plan], the District will be authorized [but not required] to fund any or all of the Improvements. [12) Who would the fund Improvements that the District elected not to??]

12. The Developer is required to fund all improvements. Section VI of the Service Plan states:

The creation of the District shall not relieve the Developer, its successors or assigns, of the obligation to construct public improvements required by any annexation or other subdivision improvement agreement.

The District shall make a determination to fund any or all of the Improvements based upon the best interests of the residents and taxpayers of the District and upon financial considerations of the District. The County shall not be responsible for assuming the costs of any of the Improvements.

A detailed description of the proposed services is contained in Section IV., Description of Proposed Facilities.

- b. *A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to Section 32-1-207 or 29-1-302, CRS. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The Board of Directors of the district shall notify the Board of County Commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.*

The District will finance the construction of the Improvements through the issuance of indebtedness as described in Section V of the Service Plan

13) beginning on page 7.

<p>13. There is no question posed here.</p>
--

Under b., 14) page 8 of the Service Plan in the section entitled Debt Issuance, ~~in the Service Plan proposal~~, it is stated that the District may additionally issue revenue bonds to facilitate the provision of water and sewer services to the development. The revenue bonds are intended to be

14. Revenue bonds are supported by a pledge of revenues other than property taxes. For example, bonds that are payable from water tap fees are revenue bonds. Under the Colorado constitution, revenue bonds are not defined as "debt." This is a technical legal point, but it is included in the Service Plan because any revenue bonds issued by the District would not count against its debt limitation.

supported by fees on the users of the system and shall not constitute debt. ???

15) What if the fees do not matriculate fast enough to offset payback of revenue bonds??

15. There are two ways that fee revenue bonds are protected from default. First, financial projections for revenue bonds never assume that 100% of anticipated fees will be needed for the payment of the bonds. A coverage ratio of 1:1.25 or even 1:1.50 will be used to calculate the amount of bonds. In other words, for each \$1.00 of bonds issued, fees of \$1.25 or \$1.50 have to be reasonably anticipated by the District. In this way, a slow down in tap fees or simple bad projections will not impair the bonds or cause a default. Second, revenue bonds are often guaranteed by the developer. The Developer agrees to purchase enough fees to make up the difference between fees paid by others and the amounts of fees required by the debt service schedule. These fees purchased by the Developer, which are called "prepaid fees," can be used on the Developer's property once development proceeds.

16) What are the type of bonds to be issued in the amount of \$2,560,000.00??

16. The bonds described in the Service Plan anticipated to be issued in the amount of \$2,560,000 are GO (general obligation) bonds. Districts pledge taxes for the payment of general obligation bonds. The general obligation bonds are subject to the mill levy cap discussed above.

Refunding bonds may be issued by the District to defease original issue bonds in compliance with applicable law. 17) Is this where the revenue bonds could come into play??

17. Refunding bonds normally pledge the same revenue as the bonds that are being refunded, so GO refunding bonds pledge tax revenues and revenue refunding bonds pledge fees. Refunding bonds are issued if economic conditions of the District or larger economic conditions in the bond market suggest that the District could lower the interest cost of existing outstanding bonds.

A public improvement corporation, commonly referred to as a "PIC," is a Colorado non-profit corporation whose articles of incorporation provide for its organization in furtherance of the objectives of the District. In conjunction with covenants recorded against the property, the public improvement corporation imposes Public Improvement fees, commonly referred to as "PIF's," for collection on retail transactions.

The Public Improvement fee is a 18) private fee imposed on all retail transactions and is not a tax. The revenues generated from the public improvement fee are used to finance public improvements.

18. PIFs and PICs. The nomenclature is admittedly confusing here. “PIF” is an acronym for “public improvement fee.” It is used to support the public infrastructure of the District, both capital expenses and ongoing operational expenses. In spite of the name, it is not a governmental fee or tax; it is imposed by the developer through covenants on the property, and as such, under Colorado law, PIFs are private fees. Nevertheless, the PIF looks and operates like a sales tax.

The Service Plan states that the District, if it is in receipt of PIF revenues, will use those revenues to support the public purposes of the District. Nowhere does the Service Plan discuss the use of the fee by the County, nor would it be appropriate for this discussion to occur in the Service Plan since the District is not the entity which imposes the fee. A separate agreement between the developer and the County will set forth the imposition and term of the PIF (the “PIF Agreement”). A PIF can be perpetual or may exist for a term of years. A draft of the PIF Agreement is attached for review.

(Continued on next page)

The County should rely on its legal counsel for an interpretation of the use of any PIF revenue it receives from the development. However, there are no restrictions on the use of the funds by the County that arises from the Service Plan or the Districts.

A “PIC” is a public improvement corporation. It is a Colorado non-profit corporation that collects the PIF and which is permitted by IRS rules and regulations to issue tax-exempt bonds secured by the PIF revenues. The District can act as the PIC or a separate entity can be created. The PIC only exists to satisfy the regulations of the federal government for the issuance of tax exempt bonds.

The mechanism will be that the PIF is imposed by covenant and collected by the PIC (which might be the District). The PIC then distributes the applicable PIF revenues to the County pursuant to the terms of the PIF Agreement and to the District or bondholder pursuant to other documents.

The language in Section V.b of the Service Plan regarding PIFs will be amended as follows:

The Developer intends to record covenants against the property within the boundaries of the District that will impose a public improvement fee (“PIF”) on the property. The PIF will be collected on any taxable transaction that occurs on the property. Although PIFs are private fees, the Developer anticipates that a portion of the PIFs will be made available to the District to defray the cost of public improvements and a portion of the PIFs will be made available to the County to offset the cost of providing services to the property, or for other purposes as the County deems appropriate. The Developer will enter into agreements with the Districts and with the County regarding the PIF revenues.

(End of response)

[19) It is understood that those private fees would go toward public improvements within the District. They would not / could not go into the County's general fund to support anything outside the District. Please elaborate.

19. See #18.

The revenues generated from the Public Improvement fee lessens the need for the District to issue general obligation bonds payable from ad valorem property taxes on the property. Upon completion of the construction of the Improvements, the District shall dedicate all or some of the Improvements to the County or other appropriate non-profit or governmental entity. [20) The District anticipates dedicating all or some of the Improvements, including all park and recreation improvements and facilities, to the County or other appropriate non-profit or governmental entity, to be owned, operated and maintained; if it was the County, the PIF funding could be used toward that end.

20. Either the District or the County could use PIF revenues for ongoing maintenance of public improvements or for administrative expenses.

21) However, the County could not place any PIF funds in its general fund where they might be used outside the District. Please explain if you understand different.

21. The County should rely on its legal counsel for an interpretation of the use of any PIF revenue it receives from the development. However, there are no restrictions on the use of the funds by the County that arises from the Service Plan or the Districts.

The District shall provide for maintenance of the Improvements as mutually agreed upon with the County. [22) It is understood that a Subdivision Improvement Agreement could address some of these issues.

22. The Petitioner agrees that many specific development questions will be answered once development approvals are in place.

The Financial Plan is explained in the Service Plan beginning on page 7. Exhibit G details the anticipated indebtedness and revenues through the year 2042 for the Commercial District. The estimated assessed valuation at full build-out is Seven Million, Nine Hundred Ninety-Seven Thousand, Five Hundred Seventy-Five Dollars [\$7,997,575.00]. The Financial Plan indicates the improvements anticipated for District, can be achieved with a levy of 25 mills for the Commercial District.

- c. *A preliminary engineering or architectural survey showing how the proposed services are to be provided.*

An estimate of preliminary Engineering costs is contained in

Exhibit E. with the Improvements estimates based on the County's construction standards. The construction estimate, attached hereto and incorporated herein as Exhibit E, lists all of the Improvements that the District, [subject to development approval of the County], will be authorized to provide, including the costs in current dollars of each.

Exhibit F contains maps illustrating the location of public improvements. The maps include Water, Sanitary Sewer, Storm Drain, and Roadway Improvements.

The Developer has prepared a preliminary engineering construction estimate for the Improvements based on the County's standards. The construction estimate, attached hereto and incorporated herein as Exhibit E, lists all of the Improvements that the District, subject to development approval of the

County, will be authorized to provide, including the costs in current dollars of each.

- d. *A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district.*

A map showing the preliminary location of the Improvements is attached hereto and incorporated herein as Exhibit B. The District shall be authorized to construct the Improvements generally shown on Exhibits E, (estimates of probable cost) and F, (location of probable improvements), subject to the specific final design and approval thereof by the County.

[23] It is understood that the Improvements tied to the specific final design and approval of the County are part of the Subdivision Improvement Agreement.]

23. The Petitioner agrees with this statement.

Phasing of construction shall be determined by the District to meet the needs of residents and taxpayers within its boundaries.

The estimated assessed valuation at full build-out is Seven Million, Nine Hundred Ninety-Seven Thousand, Five Hundred Seventy-Five Dollars (\$7,997,575.00)

The current population of the District for purposes of this Service Plan is zero. The working population of the District as full build-out is estimated to be Four Hundred Twenty-Five , [425], people, subject to development approval by the County. There will be no resident population. It is acknowledged that County development standards and requirements may affect the foregoing numbers of anticipated commercial development and population.

- e. *A general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located and of municipalities and special districts which are interested parties pursuant to section 32-1-204(1).*

A general description of the facilities to be constructed and the standards of such construction are contained in the Service Plan, Section IV, (p4).

The District shall be authorized to provide for the financing, construction, acquisition, installation and 24) perpetual maintenance of streets, water, sanitary sewer, traffic and safety controls, street lighting, park and recreation, landscaping, and storm drainage facilities, [as the foregoing are defined in Section 32-1-1004[2], C.R.S., subject to mutual agreement between the District and the County. The Developer has prepared a preliminary engineering construction estimate for the Improvements based on the County's construction standards.

24. The Service Plan will be revised to reflect that the District will retain the obligation for maintenance of any public improvements that are not accepted for maintenance by the County or by another government entity or ownership association.

- f. A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated maximum interest rates and discounts and other major expenses related to the organization and initial operation of the district.*

A Financial plan is provided on Exhibit G in the Service Plan.

- g. A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision and of the*

form contract to be used, if available, shall be attached to the service plan.

The District anticipates entering one or more intergovernmental agreements with the Elizabeth 86 Residential Metropolitan District and Elbert and Highway 896 Commercial Metropolitan District. This would be for the purpose of effecting efficiencies between the districts, operation and maintenance expenses or financial efficiencies.

- h. Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable is met.*

The Applicant has submitted the required materials as specified and set forth in the Colorado Revised Statutes.

- i. Such additional information as the Board of County Commissioners may require by resolution on which to base its findings, pursuant to (CRS 32-1-203.*

Community & Development Services believes that while the Applicant has submitted documentation to address information within the required outlined statutory requirements, 25) there remain several questions / comments for which clarification and detail would be helpful.

25. The Petitioner remains willing to answer any additional questions and comments. Service Plans generally lack the specificity of development documents such as plats and subdivision improvement agreements. They are not intended to have such specificity, but are intended to be flexible documents that will accommodate the final development approvals so that the financing purposes of the District can be accomplished. Service Plans necessarily are forward-looking documents, which means they rely on projections of future development and assumptions regarding assessed valuation and pace of development. Projections may not match actual development and service plans are intended to have the ability to respond to actual development as it occurs within a certain range of the earlier projections. Only significant variations should result in a service plan amendment.

Additional Questions from Planning Commission not in the Staff Report.

26. How will these Districts be integrated with the E&Hwy86 Districts?

The proposed Elizabeth 86 Commercial and Residential Districts are adjacent to the already-existing Elbert & Highway 86 Districts, but are separately organized and operating local governments that serve the needs of different residents and taxpayers. The Elizabeth 86 Districts may enter into one or more intergovernmental agreements with the Elbert & Highway 86 Commercial District and/or the Town of Elizabeth, Colorado for the provision of water and sanitation services, but until the approval for the Elizabeth 86 development is finalized and approved by the County, it is unknown exactly if or when such agreements may be generated.

ADOPTION OF A SERVICE PLAN:

The Colorado Revised Statutes (CRS, 32-1-203), specify the responsibility and authority for the review of any service plan.

1. . . . *With reference to the review of any service plan, the Board of County Commissioners has the following authority:*
 - a. *To approve, without condition or modification, the service plan submitted:*
 - b. *To disapprove the service plan submitted:*

- c. *To conditionally approve the service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan.*

2. *The Board of County Commissioners shall disapprove the service plan unless evidence satisfactory to the Board of each of the following is presented:*

- a. *There is sufficient existing and projected need for organized service in the areas to be serviced by the proposed special district.*
- b. *The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.*
- c. *The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.*
- d. *The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.*

2.5 *The Board of County Commissioners may disapprove the service plan if evidence satisfactorily to the Board of any of the following, at the discretion of the Board, is not presented:*

- a. *Adequate service is not, or will not be, available to the area through*

the County or other existing municipal or quasi-municipal corporations, including existing special districts within a reasonable time and on a comparable basis.

- b. The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204(1).*
 - c. The proposal is in substantial compliance with a Master Plan adopted pursuant to section 30-28-106, CRS.*
 - d. The proposal is in compliance with any duly adopted county, regional or state long-range water quality management plan for the area.*
 - e. The creation of the proposed special district will be in the best interests of the area proposed to be served.*
- 3. The Board of County Commissioners may conditionally approve the service plan of a proposed special district upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in subsection (2) of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the finding of the Board of County Commissioners.*

REFERRALS:

The time frame, provided by State Statute for bringing a Special District before the Board of County Commissioners, does not provide for a Referral process.

Referrals would be conducted for the PUD, preliminary and final plat, and 1041 at the appropriate time.

It is understood that Elbert County could develop a formalized information process through which a more detailed understanding of Special District formation could be achieved.

As currently understood, the fee structure provided by the State is generally insufficient to allow financing of a detailed review of Engineering and structure expense as well as a financial review by a qualified financial consultant.

FINDINGS:

In the opinion of Community & Development Services, the submitted Elizabeth 86 Commercial Metropolitan District Service Plan has addressed each of the requirements specified in CRS 32-1-102 Section XIII Conclusion (p 13) in the Service Plan list the following:

- a. Adequate service is not, and will not, be available to the area to be served by the District through the County or other existing special districts within a reasonable time and on a comparable basis;
- b. The facility and service standards of the proposed District are compatible with the facility and service standards of the County;
- c. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed District;

- d. The existing service in the area to be served by the proposed District is inadequate for present and projected needs;
- e. The District, as proposed, is capable of providing economical and sufficient service to the area within its proposed boundaries;
- f. The area included within the District, as proposed, has or will have the financial ability to discharge the proposed indebtedness on a reasonable basis;
- g. The proposal is in substantial compliance with any duly adopted master plans;
- h. The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area; and
- i. The creation of the proposed District will be in the best interest of the area proposed to be served.

Community & Development Services Comments: The development of this District will add infrastructure to the County. Land that is currently taxed as Agriculture, will become classified as commercial.

It is understood that the County shall not be responsible for assuming the costs of any of the Improvements, and the developer of the property shall be responsible for any improvement costs that exceed the amount of debt issued by the District.

The Elbert County Board of County Commissioners should review the attached Service Plan and the Staff Report. As provided in CRS 32-1-203(1)(a)(b) or (c) the Board of County Commissioners should adopt one of the following options:

- approve
- disapprove
- conditionally approve

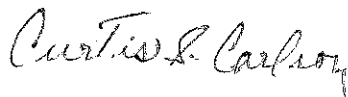
RECOMMENDATION:

This project was presented to the Planning Commission at a public hearing on August 26, 2010. Due to questions raised, the Planning Commission "Continued" their hearing to September 9, 2010. Please refer to the attachment – Planning Commission Happenings for a sampling of questions and comments raised at the Planning Commission hearings. Details are available from the recordings.

At the close of the public hearing on September 9, 2010, the Planning Commission voted 4 – 2 to approve this project and is forwarding a recommendation to the Board of County Commissioners for their consideration **"To approve," SP 10-0023 ELIZABETH 86 COMMERCIAL METROPOLITAN DISTRICT**, subject to the following conditions:

1. A satisfactory financial study by a third party professional
2. Adopt the Findings enumerated herein.

Respectfully submitted,



Curtis S. Carlson

Senior Planner

Attachments: Clifton-Gunderson Financial Comments, Updated Service Plans for Elizabeth 86 Commercial Metropolitan District, Power Point presentation to Planning Commission of September 9, 2010, Planning Commission notes from Hearing of August 26 & September 9 and Draft Resolution .